IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5954 of 1984

Date of decision:

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be
    allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the
    fair copy of the judgment?

4. Whether this case involves a substantial
    question of law as to the interpretation
    of the Constitution of India,1950 or any
    order made thereunder?

5. Whether it is to be circulated to the
    Civil Judge?

    KALUSING JETHABHAI CHAUHAN   SINCE DECD.BY HIS HEIRS,
Versus
    COLLECTOR

    Appearance:
        Ms. D.T. Shah for Petitioners
        None present for Respondent No. 1, 2, 3

    CORAM : MR.JUSTICE S.K.KESHOTE
    Date of decision: 17/01/97

    ORAL JUDGEMENT
     This special civil application has been filed in

the year 1984. Though more than 12 years have already passed, the respondents have not filed reply to the petition. Today none is present on behalf of the respondents to assist the court.

Heard the learned counsel for the petitioner and perused the special civil application.

2. The facts of the case in short are that the petitioner is owner of land bearing Survey Nos. 981/1, 982/2 and 991, situated in the sim of village Halol. The petitioner submitted application on 6thJuly, 1982 to the respondents, praying for permission under section 63A and 64 of the Bombay Tenancy and Agricultural Lands Act,1958. Under order dated 7th May, 1983 the permission, as prayed for by the petitioner, was granted. Pursuant to the said order, on 2nd June, 1983 the petitioner deposited Rs.48,958.25 ps. By letter dated 13th July, 1983 respondent No.1 demanded from the petitioner to pay Rs.48,958.25 ps. more. This demand has been made by the Collector on the strength of the circular dated 31st December, 1983. [The date of the letter mentioned as '13th July, 1983' in para 5 of the petition is incorrect. It is really a sorry state of affair that in this Court the advocates are not taking any trouble or pains to go through the petition after the same is typed, to see that all the facts are correctly stated. From annexure-C it appears that the date of letter of the Collector is '21st December, 1983. From annexur-D it appears the date of the aforesaid Circular is '13th July, 1983', which has been incorrectly stated in para 5 of the petition.]

3. Against the additional demand of Rs.48,958.25 ps. the petitioner preferred revision application before the State Government under section 211 of the Land Revenue Code. The revision application came to be dismissed on the ground that it is not maintainable. The State Government was of the opinion that the demand which has been made by the Collector is under the Government's order and as such the revision of the petitioner is outside the area of the authority. The counsel for the petitioner contended that the circular dated 13th July, 1983 is an administrative circular. The Government has revised the amount to be paid by a person which calls for permission for nonagricultural use of the agricultural land and it could not have been given retrospective effect. The petitioner was granted permission for nonagricultural purpose under order dated 7-5-1983 and the amount has been deposited on 2nd June, 1983. This circular is of 13th July, 1983 and as such it could not have been made applicable to the case of the petitioner.

It has next been contended that the revisional authority has committed serious error which is apparent on the face of the order, in not entertaining the revision petition only on the ground of jurisdiction. The petitioner's case is that the Government Resolution dated 13th July, 1983 is not applicable to the case of the petitioner and as it has not been given retrospective effect and to that extent the revisional authority has jurisdiction to go into the merits of the matter.

4. I have given my thoughtful consideration to the submission made by the counsel for the petitioner.

5. As I am of the opinion that the second contention raised by the counsel for the petitioner deserves acceptance, it is not proper for this court to proceed to decide the first contention raised by the counsel for the petitioner on merits. The revisional authority has certainly fell in error in not entertaining the revision petition on the ground that whatever demand made by the Collector was under the Government's order. It is true that the demand has been made by the Collector under the Government Order. But the question before the Revisional Authority was whether the circular which has been issued after the grant of N.A. permission to the petitioner can be made applicable to his case or not, and whether the circular can be given retrospective effect, making it applicable to the matters which were already decided. The case of the petitioner is that the circular is not applicable to his case and as such the demand made by the Collector for additional amount is wholly unwarranted. This question could have been and should have been gone into by the revisional authority. It is the revisional authority which is the authority competent to decide whether the circular/resolution of the Government dated 13th July, 1983 would have retrospective effect and whether it can be made applicable to the case of the petitioner. I fail to see why the revisional authority has raised its hands in the matter to decide the question about applicability of the circular to the case of the petitioner. In view of the above facts, the order of the revisional authority cannot be allowed to stand.

6. In the result this special civil application succeeds and the same is allowed. The order dated 13th August, 1984, at annexure-E, passed by the Revisional Authority is quashedand set aside. The matter is remanded to the Revisional Authority. The Revisional Authority, i.e. respondent No.3, is directed to decide the revision application of the petitioner on merits within a period of three months from the date of receipt

of copy of this order. Rule made absolute in the aforesaid terms. No order as to costs.

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